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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/721,144	11/25/2003	Robert J. Hariri	ANTH-0004	6313
23377	7590	02/06/2006	EXAMINER	
WOODCOCK WASHBURN LLP ONE LIBERTY PLACE, 46TH FLOOR 1650 MARKET STREET PHILADELPHIA, PA 19103			MCGILLEM, LAURA L	
			ART UNIT	PAPER NUMBER
			1636	

DATE MAILED: 02/06/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action Before the Filing of an Appeal Brief	Application No. 10/721,144	Applicant(s) HARIRI, ROBERT J.	
	Examiner Laura McGillem	Art Unit 1636	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 20 January 2006 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
 b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
 (a) ☒ They raise new issues that would require further consideration and/or search (see NOTE below);
 (b) ☒ They raise the issue of new matter (see NOTE below);
 (c) ☒ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
 (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Continuation Sheet. (See 37 CFR 1.116 and 41.33(a)).


4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
 5. ☐ Applicant's reply has overcome the following rejection(s): _____.
 6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
 7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
 The status of the claim(s) is (or will be) as follows:
 Claim(s) allowed: _____.
 Claim(s) objected to: _____.
 Claim(s) rejected: 1-10, 12, 13, 15-24, 26-29, 31, 32, 34-37 and 50.
 Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
 9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
 10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
 12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s) _____.
 13. ☐ Other: _____.


 DAVID GUZO
 PRIMARY EXAMINER

Continuation of 3. NOTE: The amendments to claims 20 and 34 constitute new matter. Claim 20 is drawn to a cytotherapeutic unit distributed with a certification of the contents of said cytotherapeutic unit, which constitutes new matter because distribution of a certification is taught in the instant specification only in the context of a kit (paragraph 0051). The amendment to claim 23 recites that the certification indicates how the presence, absence and/or exclusion of certain cell types renders the cytotherapeutic unit suitable for therapy and constitutes new matter because, while the specification discloses that the certification includes the content of the cytotherapeutic unit, it does not disclose that the certification provides information on the significance of the cell type content to the suitability of the unit for therapy for an indicated disease state or condition. The amendment to claim 34 changes and broadens the scope of the claim which would require a further search. The cancellation of the claims directed to a kit for treatment and amendments to the claims do not sufficiently overcome the rejection under 35 USC 112, 1st paragraph (scope of enablement).

Continuation of 11. does NOT place the application in condition for allowance because: Once a final rejection that is not premature has been entered in an application, applicant or patent owner no longer has any right to unrestricted further prosecution. The amendments do not place the application either in condition for allowance or in better form for appeal. For reasons given above, and on the grounds that the amended claims potentially include new matter and raise further issues for consideration which would require an additional search of the prior art, the amended claims have not been entered. The amendments do not place the application either in condition for allowance or in better form for appeal. Therefore, Applicant's arguments based on addition of the amended claim set are moot. Applicant is invited to review MPEP 714.12.